

IC 15-7-5

Chapter 5. Indiana Development Finance Authority; Agricultural Development

IC 15-7-5-1 Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-2

Legislative findings and declaration

Sec. 2. It is hereby found and declared that:

- (1) There exists in this state an inadequate supply of affordable farm credit and agricultural loan financing at interest rates which are consistent with the needs of borrowers for farming and agricultural enterprises, which if not supplemented will make it difficult for farmers and other agricultural enterprises to maintain or increase present employment levels and to maintain or increase crops, livestock and business productivity, all of which will have an adverse effect upon the welfare of the citizens of the state and the economy of the state.
- (2) There exists in particular in this state a need for affordable farm credit and agricultural loan financing for new and young farmers, for small farmers, for family farm operations, and for farmers for whom loans in the conventional farm credit markets are either not available or not affordable at interest rates found in conventional farm credit markets. Alleviation of the problems described in paragraphs (1) and (2) of this section as they apply to the agricultural enterprises described in this paragraph is the primary purpose of this chapter.
- (3) Such problems cannot be remedied through the operation of private enterprise alone, but can be alleviated through the creation of a governmental body to encourage the investment of private capital in the agricultural sector through the use of public financing as provided by this chapter for the purpose of making loans available at interest rates lower than those available in the conventional farm credit markets, and by coordinating and cooperating with farmers, other agricultural enterprises and local communities, which is essential to alleviating these conditions and is in the public interest.
- (4) Alleviating the conditions and problems by the encouragement of private investment through a governmental body is a public purpose and a use for which revenue bonds may be issued.
- (5) The necessity for the provisions of this chapter to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared as a matter of legislative determination.

As added by Acts 1981, P.L.165, SEC.1.

IC 15-7-5-3

Repealed
(Repealed by P.L.122-1988, SEC.9.)

IC 15-7-5-4
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-5
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-6
Chairman; appointment; election of officers; expenses
Sec. 6. The governor shall name the chairman from among the members to serve as chairman at the pleasure of the governor. The members shall elect from among their number a vice chairman and other officers as they may determine. They shall receive no compensation for their services but shall receive reimbursement for actual and necessary expenses on the same basis as state employees.
As added by Acts 1981, P.L.165, SEC.1.

IC 15-7-5-7
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-8
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-9
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-10
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-11
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-12
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-13
Repealed
(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-14

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-15

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-15.5

Additional powers

Sec. 15.5. To carry out the public and corporate purposes of the authority under this chapter, the authority has the powers set forth in IC 4-4-11 and the additional powers specifically provided in this chapter.

As added by P.L.11-1990, SEC.122.

IC 15-7-5-16

Loans to lenders for agricultural enterprises

Sec. 16. The authority may make and undertake commitments to make loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make loans for agricultural enterprises. Loan commitments or actual loans shall originate through and be serviced by any eligible lender.

As added by Acts 1981, P.L.165, SEC.1. Amended by P.L.11-1990, SEC.123.

IC 15-7-5-16.5

Loan agreement; security or evidence

Sec. 16.5. A loan agreement under this chapter may provide for the loans to be secured by or evidenced by one (1) or more notes, debentures, or other secured or unsecured debt obligations of the contracting party or parties, delivered to the authority or to the trustee under the indenture under which the bonds were issued.

As added by P.L.122-1988, SEC.3. Amended by P.L.11-1990, SEC.124.

IC 15-7-5-16.7

Sale contract permitting title transfer before full payment; debt obligations for payment

Sec. 16.7. If a sale contract permits title to the project to pass to the contracting party or parties before payment in full of the entire purchase price, it must also provide for the contracting party or parties to deliver to the authority or to the trustee under the indenture under which the bonds were issued one (1) or more notes, debentures, or other secured or unsecured debt obligations of the contracting party or parties providing for timely payments, including interest on the notes, debentures, or debt obligations for the balance of the purchase price at or prior to the passage of title.

As added by P.L.122-1988, SEC.4. Amended by P.L.11-1990, SEC.125.

IC 15-7-5-17

Loans; investment, purchase, or assignments by authority; requisites; loans relating to real property; restrictions

Sec. 17. (a) The authority may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of, loans made for agriculture or agricultural enterprises or for refinancing loans made for agriculture or agricultural enterprises. Prior to investment, purchase, assignment, or commitment, the lender shall certify that the proceeds therefrom or its equivalent will be reinvested in loans or used to make loans to provide agricultural enterprises, or pending reinvestment in such loans or the making of such loans, invested in short term obligations complying with the requirements of section 34 of this chapter. The authority shall purchase loans at a purchase price equal to the outstanding principal balance, but the authority may require a discount from the principal balance or make a payment of a premium to effect a fair rate of return for the lender, as determined by the rate of return on comparable investments under market conditions existing at the time of purchase. In addition to the payment of outstanding principal balance, the authority shall pay the accrued interest due thereon, on the date the loan is delivered against payment therefor or on another date as may be established by agreement between the authority and the selling lender.

(b) The authority may not invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of loans made for the construction, rehabilitation, or purchase of real property unless the borrower, in a written contract separate from the mortgage, promises that for a period of ten (10) years from the date of the loan he will not convey the real property to another without a written release from the authority. The authority shall record the contract in the same manner as a mortgage on real property and when recorded the contract constitutes an absolute bar on the alienation of the property until ten (10) years after the date of the mortgage or until released in writing by the authority. The authority may not release a contract under this subsection unless the release is compatible with section 2 of this chapter.

As added by Acts 1981, P.L.165, SEC.1. Amended by P.L.22-1987, SEC.9; P.L.11-1990, SEC.126.

IC 15-7-5-18

Loans; certification of investment quality and use; limitation

Sec. 18. Prior to exercising any of the powers authorized in sections 16 and 17 of this chapter, the authority shall require the lender to certify and agree that:

- (1) the loan is or, if the same has not been made, will at the time of making be in all respects a prudent investment; and
- (2) the lender will use the proceeds of the loan, investment sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises or, if the

lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the authority to purchase the loans, the lender will make the loans and sell the same to the authority within a reasonable period of time.

As added by Acts 1981, P.L.165, SEC.1. Amended by P.L.11-1990, SEC.127.

IC 15-7-5-19

Loans; discretionary powers

Sec. 19. Prior to exercising any of the powers conferred by sections 16 and 17 of this chapter, the authority may:

- (1) require that the loan involved be:
 - (A) insured by a loan insurer; or
 - (B) guaranteed by a loan guarantor or the authority under section 19.5 of this chapter;
- (2) require any type of security that it deems reasonable and necessary; or
- (3) authorize the reservation of funds by lenders in the amount and subject to conditions as the authority considers reasonable and necessary under this chapter.

As added by Acts 1981, P.L.165, SEC.1. Amended by P.L.122-1988, SEC.5; P.L.11-1990, SEC.128.

IC 15-7-5-19.5

Agricultural loan and rural development project guarantee fund

Sec. 19.5. (a) There is created an agricultural loan and rural development project guarantee fund. The authority shall use the fund as a nonlapsing, revolving fund for carrying out the provisions of the guarantee program. The fund consists of the money appropriated to the fund by the general assembly, and money, property, and other things of value contributed to the fund by any other source. To this sum shall be charged those expenses of the authority attributable and allocated by the authority to the authority's guarantee program, including interest, principal, and lease payments required by loan or lease defaults, under the authority's guarantee program. To this sum shall be credited that income of the authority attributable and allocated by the authority to the authority's guarantee program, including guarantee premiums.

(b) If the authority makes a written finding that:

- (1) the guarantee of a particular loan secured by, or lease of, real property or tangible or intangible personal property to or for the benefit of any agricultural enterprise or rural development project would tend to accomplish the purposes of this chapter, including the creation or retention of employment in Indiana through the guarantee of the lease;
- (2) the proposed borrower or lessee cannot obtain the loan or lease upon reasonable terms; and
- (3) the proposed borrower, lessee, lender or lessor has filed an application on a form prescribed by the authority;

the authority may, under its guarantee program, guarantee the loan or lease upon the terms and conditions that the authority prescribes.

(c) No new or additional guarantee of a loan or lease under subsection (b), (e), or (j) may be entered into if the guarantee would cause the outstanding aggregate guarantee obligations with respect to all loans and leases guaranteed under subsections (b), (e), and (j) to exceed eight (8) times the amount of money in the fund. The amount of all guarantees by the authority of loans or leases to or for the benefit of any single agricultural enterprise or rural development project may not exceed three hundred thousand dollars (\$300,000), less the outstanding aggregate principal balance under any loans made and owed to the authority under subsection (j) to or for the benefit of the enterprise or rural development project. A guarantee of either a loan secured by real estate or a real estate lease may not exceed ninety percent (90%) of the unpaid principal balance of the loan from time to time outstanding or ninety percent (90%) of the amount of any lease payment, as applicable, and the original principal amount of the loan or the aggregate amount of the lease payments, as applicable, may not exceed ninety percent (90%) of the appraised fair market value of the real estate. A guarantee of a loan secured by personal property or of a personal property lease may not exceed seventy-five percent (75%) of the unpaid principal balance of the loan from time to time outstanding or seventy-five percent (75%) of the amount of any lease payment, as applicable, and the original principal amount of the loan or the aggregate amount of the lease payments, as applicable, may not exceed seventy-five percent (75%) of the appraised fair market value of the personal property. A guarantee involving both real estate and personal property may not exceed the percentage proportionate to each type of property.

(d) To be eligible for a guarantee under this section, a loan or lease must:

- (1) be one which is to be made to and held by a lender or lessor approved by the authority as responsible and able to service the loan or lease properly;
- (2) involve a principal obligation or lease payments, as applicable, which may include initial service charges and appraisal, inspection, and other fees approved by the authority;
- (3) have a maturity or term satisfactory to the authority but in no case later than twenty (20) years from the date of the guarantee;
- (4) contain payment terms satisfactory to the authority requiring periodic payments by the developer or user, including principal and interest payments, cost of local property taxes and assessments, land lease rentals, if any, insurance on the property, as applicable, and the guarantee premiums that are fixed by the authority; and
- (5) contain terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary

liens, and other matters that the authority prescribes.

(e) The authority may guarantee an unsecured loan for working capital purposes if the authority determines, under criteria that the authority establishes, that:

(1) the loan for working capital is for an agricultural enterprise or a rural development project; and

(2) the loan for working capital will lead directly to increased production or job creation or retention through sales of products or provision of services to federal, state, or local government or private business or individuals or through exports to foreign markets.

The working capital loan guarantee may not exceed two hundred thousand dollars (\$200,000) for any single agricultural enterprise or rural development project and may be in addition to any other guarantees of the authority under this section. The guaranteed terms must include a time limit for working capital loan guarantees that may not exceed eighteen (18) months. However, the guarantees are renewable. A working capital loan guarantee may not exceed eighty percent (80%) of the unpaid principal balance from time to time outstanding of the loan being guaranteed. The authority may impose additional terms that the authority considers appropriate for any particular agricultural enterprise or rural development project.

(f) The authority may fix guarantee premiums for the guarantee under this section of any loan or lease outstanding at the beginning of each year or at the time the guarantee is entered into, and the authority is authorized to fix loan application, placement, origination, commitment, administrative, processing, or other fees or charges in connection with the powers of the authority under subsection (j). These premiums, fees, or charges may be payable in amounts or based upon formulas established by the authority and may be payable, at the election of the authority, in whole or in part, in the form of cash, shares of stock, warrants for the purchase of shares of stock, or other securities, property, or rights acceptable to the authority. These premiums, fees, or charges are payable by the borrower or user to the authority in a manner prescribed by the authority.

(g) Any guarantee made by the authority under subsection (b), (e), or (j) may be effected or enhanced, in whole or in part, through the provision by the authority of a letter of credit or an equivalent form of credit enhancement instrument. However, the maximum principal payment obligations of the authority under the credit instrument, as the same may be effective from time to time, is the amount of the guarantee or part of the guarantee made under subsection (b), (e), or (j) and for purposes of the limitations on the amount of guarantees under subsection (c), (e), or (j). The term of any letter of credit may not exceed the respective terms established for guarantees or loans under subsections (d), (e), and (j).

(h) Notwithstanding any other law, loans or leases guaranteed or made by the authority are legal investments for all insurance companies, trust companies, banks, investment companies, savings

banks, executors, trustees and other fiduciaries, and pension or retirement funds, as well as the board for depositories.

(i) To further the purposes of this chapter and subject to this chapter, the authority may also use any part of the fund to guarantee any bonds issued by the authority under this chapter or by any authorized issuer under IC 36-7-12. With regard to direct obligations of the authority that are also guaranteed by the authority, the authority may permit a subordination of any valid security agreement, mortgage, combinations thereof, or other appropriate documents securing the direct obligations if the authority in its discretion determines that the subordination is reasonably necessary to accomplish the objectives of the authority.

(j) To further the purposes of this chapter, and in addition to the authority's other powers under this chapter, the authority may, upon a written finding as described in subsection (b), also make direct loans from money in the guarantee fund to or for the benefit of any agricultural enterprise or rural development project upon the terms and conditions that the authority prescribes. No new or additional loan may be made if the loan would cause the then outstanding aggregate guarantee obligations with respect to all loans and leases guaranteed under this subsection and subsections (b) and (e) to exceed eight (8) times the amount of money then in the agricultural loan and rural development project guarantee fund or would cause the then outstanding aggregate principal balance of all loans made under this subsection and then owing to the authority to exceed twenty percent (20%) of the amount of money then in the guarantee fund. The principal amount of such a loan to or for the benefit of an enterprise or rural development project may not exceed two hundred thousand dollars (\$200,000), less the then outstanding aggregate guarantee obligations with respect to any loans or leases guaranteed under this subsection and subsections (b) and (e) to or for the benefit of that enterprise or rural development project. With respect to any loan made under this subsection, a loan agreement with the authority must contain the following terms:

- (1) A requirement that the loan proceeds be used for specified purposes consistent with and in furtherance of the purposes of the authority under this chapter.
- (2) The term of the loan, which must be not later than twenty (20) years from the date of the loan.
- (3) The repayment schedule.
- (4) The interest rate or rates of the loan, which may include variations in the rate, but which may not be less than the amount necessary to cover all expenses of the authority in making the loan.
- (5) Any other terms and provisions that the authority requires.

In addition, any loan agreement with the authority under this subsection may also contain a requirement that the loan be insured directly or indirectly by a loan insurer or be guaranteed by a loan guarantor and a requirement of any other type or types of security or collateral that the authority considers to be reasonable or necessary.

Any loan made under this subsection may be sold by the authority, and the authority may permit other lenders to participate in any loan made under this subsection, at the time or times and upon the terms and conditions that the authority considers reasonable or necessary. A loan sold or in which other lenders participate may be guaranteed by the authority upon terms and conditions established by the authority.

(k) All proceeds received by the authority from the disposal by sale or in some other manner of property it acquired under this chapter and in connection with its guarantee program or otherwise under this section shall be credited to the fund.

(l) The money in the fund does not revert to the state general fund at the end of a fiscal year.

(m) Upon the issuance of a loan or a guarantee of a loan or lease under this section, any expenses incurred by the authority in connection with the loan or guarantee or the enterprise or rural development project for which the loan or guarantee is being made shall be reimbursed to the authority by the borrower, in the case of a loan (to the extent not provided for under subsection (f)), or by the borrower, lender, lessee, or lessor in the case of a guarantee of a loan or lease, from the proceeds of the loan or the payments under the lease or otherwise.

As added by P.L.122-1988, SEC.6. Amended by P.L.11-1990, SEC.129; P.L.1-1993, SEC.169.

IC 15-7-5-19.6

Agricultural loan guarantee fund; reversion of state funds upon termination

Sec. 19.6. If the fund established under section 19.5 of this chapter ceases to exist, the money in the fund attributable to transfers from the state general fund reverts to the state general fund.

As added by P.L.122-1988, SEC.7.

IC 15-7-5-20

Rules; adoption; requisites; eligibility of borrowers

Sec. 20. (a) Prior to carrying out any of the powers granted under sections 16, 17, and 19.5 of this chapter, the authority may adopt rules under IC 4-22-2 governing its activities authorized under this chapter, including rules relating to the following:

(1) Procedures for the submission of requests or invitations and proposals for making loans to lenders and the investment in, purchase, assignment, and sale of loans.

(2) The reinvestment by lenders of the proceeds or an equivalent amount, from any loan to lenders or the investment in or purchase by the authority or the assignment or sale of loans to the authority, in loans to provide agricultural enterprises or rural development projects.

(3) The number of agricultural projects and rural development projects, location of the projects, and other characteristics of agricultural enterprises and rural development projects,

including to the extent reasonably possible assurance that the agricultural enterprises or rural development projects to be financed by an issue of bonds or series of issues will improve employment conditions and enhance the welfare of persons in the agricultural sector, as determined by the authority, to be financed directly or indirectly by the authority pursuant to sections 16, 17, and 19.5 of this chapter.

(4) Rates, fees, charges, and other terms and conditions of originating or servicing loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer.

(5) The type and amount of collateral or security to be provided to assure repayment of loans made or guaranteed by the authority and the fees to be charged under section 19.5 of this chapter.

(6) The type of collateral, payment bonds, performance bonds, or other security to be provided for any loans made by a lender for construction loans.

(7) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority.

(8) Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions, and interest rates for loans made, purchased, sold, assigned, or committed pursuant to sections 16, 17, and 19.5 of this chapter.

(9) Commitment requirements for agricultural financing by lenders involving money provided directly or indirectly by the authority.

(10) Any other matters related to the duties or exercise of the authority's powers or duties under this chapter.

(b) In adopting rules governing its activities, including rules relative to subsection (a)(1) through (a)(10), the authority shall consider the following factors relative to eligibility of borrowers for loans made or guaranteed pursuant to this chapter:

(1) The length of time any borrower has been engaged in the business of agriculture or development.

(2) The net income of any borrower in the preceding year or years.

(3) The net worth of any borrower.

(4) The availability or feasibility of alternative financing methods for any borrower.

(c) The following entities may not be borrowers:

(1) A corporation that has more than ten (10) shareholders.

(2) A corporation that has any shareholder that is a corporation, a subsidiary of a corporation, or a subsidiary of a subsidiary of a corporation with more than ten (10) shareholders.

(3) A partnership, joint venture, firm, limited liability company, or association that has any member who is a corporation, a subsidiary of a corporation, or a subsidiary of a subsidiary of a corporation with more than ten (10) shareholders.

As added by Acts 1981, P.L.165, SEC.1. Amended by P.L.22-1987, SEC.8; P.L.122-1988, SEC.8; P.L.11-1990, SEC.130; P.L.8-1993, SEC.248; P.L.27-1993, SEC.24; P.L.1-1994, SEC.86.

IC 15-7-5-21

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-21.5

Bonds; power to issue and secure

Sec. 21.5. For purposes of this chapter, the authority may issue and secure bonds in accordance with IC 4-4-11.

As added by P.L.11-1990, SEC.131.

IC 15-7-5-22

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-23

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-24

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-25

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-26

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-27

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-28

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-29

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-30

Bonds; negotiable instruments

Sec. 30. Whether the bonds are in the form and character of negotiable instruments, the bonds are hereby made negotiable

instruments, subject only to provisions of the bonds relating to registration.

As added by Acts 1981, P.L.165, SEC.1.

IC 15-7-5-31

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-32

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-33

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-34

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-35

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-36

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-37

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-38

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-39

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-40

Repealed

(Repealed by P.L.11-1990, SEC.135.)

IC 15-7-5-41

Construction of chapter

Sec. 41. This chapter shall not be construed as a restriction or limitation upon any powers which the authority might otherwise have under any other law of this state, and this chapter is cumulative to the powers. This chapter shall be construed to provide a complete,

additional, and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws.

As added by Acts 1981, P.L.165, SEC.1. Amended by P.L.23-1984, SEC.12; P.L.11-1990, SEC.132.

IC 15-7-5-42

Repealed

(Repealed by P.L.11-1990, SEC.135.)